

TOWN OF RYE – BOARD OF ADJUSTMENT MEETING

**Wednesday, April 15, 2020
7:00 p.m. – via ZOOM**

Members Present: Acting-Chair Shawn Crapo, Burt Dibble, Patrick Driscoll, and Gregg Mikolaities and Charles Hoyt

Present for the Town: Planning/Zoning Administrator Kimberly Reed and Attorney Michael Donovan

Note: Shawn Crapo sat as acting-chair for Patricia Weathersby for the meeting.

I. CALL TO ORDER

Chair Crapo called the meeting to order via Zoom teleconferencing at 7:07 p.m.

Statement by Shawn Crapo:

As chair of the Rye Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 379-8081 or by clicking on the following website address: www.zoom.com ID #893-260-866 Password: RyeNH03870.

Public notice has been provided to the public for the necessary information for accessing the meeting, including how to access the meeting using Zoom telephonically. Instructions have also been provided on the website of the board at: town.rye.nh.us go to the Board of Adjustment page and click on the agenda for this meeting. If anyone has a problem, please call 379-8081 or email: Kim Reed at KReed@town.rye.nh.us.

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Chair Crapo asked for a moment of silence in memory of all who have been lost during the COVID-19 pandemic and for their families as well.

Roll call attendance of members:

1. Chair Shawn Crapo
2. Charles Hoyt
3. Gregg Mikolaities
4. Burt Dibble
5. Patrick Driscoll

(Each board member confirmed that there were no others present with them in the room.)

II. BUSINESS

- **Approval of Minutes of February 18, 2020, March 4, 2020 and March 14, 2020**

Motion by Patrick Driscoll to approve the minutes of February 18, 2020 as amended. Seconded by Gregg Mikolaities.

Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes

Motion passed.

Motion by Charles Hoyt to approve the minutes of March 4, 2020 as amended. Seconded by Burt Dibble.

**Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes
Abstained: Gregg Mikolaities**

Motion passed.

Motion by Burt Dibble to approve the site walk minutes of March 14, 2020 as amended. Seconded by Charles Hoyt.

**Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes
Abstained: Gregg Mikolaities**

Motion passed.

III. APPLICATIONS:

Note: Attorney Mulligan present via Zoom on behalf of the applicants.

1. Request by Christopher P. Mulligan, Esq from Bosen & Associates, P.L.L.C Attorneys at Law on behalf of Jonathan and Jean Murphy owners of 28 Gray Court for a request for a rehearing of the Board of Adjustment decision of March 4, 2020 granting the variances for 32 Gray Court, Tax Map 5.2, Lot 89.

Public hearing is closed during Board discussion on the request.

Chair Crapo opened to the Board for discussion.

Member Driscoll noted that he read through the minutes and the packet. He feels pretty well versed in this but he was not present at the actual meeting.

Member Dibble stated the presentation made by the attorney for the applicants for this motion had a review of the standards; however, he did not see new information. Also, he did not see any specific comment that related directly to any error in procedure. It seems that this has to do with errors in procedures, not criticisms of the way the Board considered the matter.

Chair Crapo pointed out that in reading the request for rehearing, it should be read to see if it brings to light any error of law or any misinformation that is felt to warrant a rehearing on the matter.

Member Hoyt commented that he does not have any other comments, other than what Member Dibble has said, which sums it up quite well.

Chair Crapo stated he has read both the request for rehearing and the applicants' response. The request for rehearing touches base on a couple of things and it tries to say that the Board had no findings. In reality, when the Board votes on the seven criteria, those are the findings. While there may not be an extensive discussion record on this application, there is a record. There is reference in the request that it is insufficient. This Board is very intimately familiar with the Myrica-by-the-Sea area. If the members were to sit and list their experiences and knowledge on that area, every application would take too long. Chair Crapo noted he brings quite an experience in that he grew up in that area. He is very familiar with those small lots and has sat on several applications. Some of that knowledge comes with the members when they review another application. He feels the Board brought a lot of that in to play. Was everything digested and spewed for the minutes? No; however, he does not think they have to, nor does case law say the Board has to make separate findings, other than the variances criteria vote. The Board gave it quite a review. The request for rehearing tries to make it sound like the entire structure is going to be 8ft away, when in reality part of that is just the steps. The structure is not getting as close as portrayed in the request for rehearing. Chair Crapo commented he is of the mind to deny the request for rehearing. He would like to hear from other members of the Board.

Member Driscoll stated that everything seemed to be pretty thorough and he agrees with Chair Crapo's comments.

No other comments were heard from the Board.

Motion by Burt Dibble to deny the request for rehearing on the matter of 32 Gray Court. Seconded by Charles Hoyt.

Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes

Abstained: Gregg Mikolaities

Vote: 4-0-1 Motion passed.

Present on behalf of Verizon Wireless: Attorney John Weaver, Site Acquisition Specialist Chip Fredette, Keith Vallente C-Square Systems, Audra Klumb A&D Klumb Environmental, Sylvester Bhembe Hudson Design. On behalf of AT&T: Attorney Will Dodge and Site Acquisition Specialist Frank Kelley.

2. Variances from Section 505.6 A(4) for construction of a wireless telecommunications facility within 100' wetlands buffer; Section 301.8 B(1) and 301.8 B(7) to construct a cell tower and compound within the wetlands buffer; and Section 301.8 B(5)b(2) for cutting trees greater than 4.5" in diameter, measured at a height of 4.5" above ground level, within the wetlands buffer. **Property is in the Single Residence District. Case #47a-2019.**
3. Special Exception from Sections 301.8 B(1) and 301.8 B(7) to construct a driveway within the 75' buffer to access wireless telecommunications facility. **Property is in the Single Residence District. Case #47b-2019.**

Attorney John Weaver, representing Verizon Wireless, introduced the members of his team and representatives from AT&T. He stated there have been multiple joint meetings with the Planning Board and a couple of site walks. In light of those meetings and the application materials that have been submitted showing that the application satisfies the criteria for both variances and special exception, he thought that it would be an appropriate use of time tonight to discuss any information the Board would like to review.

Chair Crapo stated that he will leave this in Attorney Weaver's court, as it is Verizon's application and burden to "dot the i's and cross the t's". He suggested a cursory review, as it has been some time.

Attorney Weaver stated that he will go through the statutory criteria and the Board can ask questions when they come up. He reviewed the criteria:

1) The granting of the variance is not contrary to the public interest.

State legislature has declared it is in the best interest of the people of New Hampshire to encourage rapid deployment of the broadest range of quality telecommunications services to the public. Additionally, Verizon has selected this particular property based on a variety of considerations that speak to the public interest that the telecommunication facility serves. Similarly, the application materials contain a clipping from the Town of Rye Newsletter from December 2017 that stated coastal areas in general and the northern portion of Rye, in particular, have little to no cell service. The idea of positioning a cellular facility here to provide and improve cellular service is certainly in the public interest.

2) The proposed use is not contrary to the spirit of the ordinance.

The spirit of the zoning ordinance is set forth in Article I, Section 102 and Article V, Section 505, which is to promote the health, safety and general welfare of the community. The proposed use is going to facilitate telecommunications, particularly among those that might not have communications otherwise or have unreliable communications without this. This is consistent with the ordinance, which is to promote health, safety and general welfare.

3) The granting of the variance would do substantial justice.

Typically, this is measured by measuring one cost benefit analysis of multiple parties. In this case, cellular service is being provided and no one would deny this is a universal good. More and more people rely on cell service, not just when they are away from their homes, but also when they are at their homes. Reports for the last decade have indicated that an increasing percentage of homes rely exclusively on wireless service for their communications with the outside world. Making sure all the people in Rye have improved service, to the greatest extent possible, is doing

substantial justice where the people of Rye benefit from that. This particular facility has been put up for vote in two forms. Once to approve this particular lease with the Town, leading to this application, and once to extend the telecommunications overlay to include this property. The town populous has weighed-in on whether there is substantial justice to approving the variances in question.

4) The proposed use would not diminish surrounding property values.

Materials have been submitted indicating that cellular facilities do not impact the value of nearby properties. In fact, in looking at the trend for percentage of homes that only have cellular communications as their means of communication, it is almost at the point where poor cell service has to be listed as an extenuating circumstance or as an externality that potential home buyers have to consider. The proposed use will have no impact on property values to surrounding properties.

5) Denial of the variance would result in unnecessary hardship to the owner.

Hardship, as the term applies to zoning, results if a restriction if applied to a particular property is arbitrary, confiscatory, or is unduly oppressive because the conditions of the property distinguish it from other properties under similar zoning restrictions. The N.H. Supreme Court has declared that the determination of a property's special conditions within the context to construct a wireless telecommunications facility, is different than other cases. The courts tell us that when an application to build a wireless telecommunications tower is designated to fill a significant gap in coverage, the suitability of the particular parcel or land for that purpose should be considered for purposes of determining hardship. Verizon has selected this site based on a variety of considerations; including, present coverage needs, local geography, the position and availability of existing towers and structures in the Rye area. Documentation of this has been submitted in the form of a radiofrequency analysis. The history of Verizon service in this area has been well documented before this Board. Verizon has satisfied that criteria, as well.

Attorney Weaver stated this is a brief review of the variance criteria. There are significantly more pages in the application submission addressing these points. If there are questions from the Board, he will be happy to discuss in more detail.

Speaking to Attorney Weaver and Attorney Dodge, Chair Crapo asked if there is anything else they would like to present.

Attorney Weaver confirmed he did not have anything else at this time.

Attorney Will Dodge, representing AT&T, stated that he agrees with everything Attorney Weaver has said. He would just like to point out that this affects two carriers who are in the same situation, as far as needing this coverage.

Referring to the original application, Chair Crapo pointed out that the March vote by the Town of Rye changed the zoning. There had been an original variance request to 505.6.A.4, which was for a wireless telecommunications facility within 100ft of the wetlands. Due to that vote and change in zoning on March 10, 2020 that part of the application request is no longer needed.

Chair Crapo opened to questions from the Board.

Member Driscoll asked if there is a protocol in place to remove the tower safely if the tower happens to fall into the wetlands, while keeping the health of the wetland in mind as well. He asked for more information on if this has happened and if so, what has been done to remedy the issue.

Chip Fredette, Site Acquisition Specialist, replied that he is not of any tower falling into a wetland. If it were to happen, he would image that when a crane is deployed to lift it out and remove it, the crane would be parked somewhere close to the site itself, where the area is developed and stable.

Member Driscoll asked if there are any protocols in place to help get the wetland back to a healthy situation, if that were to happen, whether it be the tower or something off the tower.

Mr. Fredette stated that any assessment that is done to restore the health of the wetland would be done on a case by case basis, if that ever actually happened.

Attorney Weaver stated he is not privy to what Verizon's internal practices and policies are on this. He would say that by virtue of the lease that Verizon has with the Town, Verizon has indemnification obligations to the Town in the event there is some sort of environmental issue like this. He thinks there would be both land use issues because of the approvals the Town is granting, but also contractual issues under the lease that Verizon would be obligated to clean up for the Town.

Member Mikolaities stated he has sat through hours of testimony and he thinks Verizon's team has done a really good job. They have been very receptive and have rolled out a number of experts. This application has come a longways. This is after hours and hours of testimony, site walks and review of plans. He is satisfied with the completeness of what has been done.

Referring to Member Driscoll's question about the tower falling into the wetlands, Attorney Donovan stated that he thinks they would also be required to get a wetland permit before removing the tower. There would be the safeguard of NH DES review for the permit to extract a fallen tower out of the wetlands.

Attorney Weaver pointed out that neither he or Chip Fredette have any record, antidotally or otherwise, about a tower falling into the wetland. He would be hard-pressed to think of any Verizon tower that has fallen over.

Chair Crapo commented that in one of the application presentations there was talk about one tower falling, but he does not know the location. He is not sure if it was in recent years or not.

Member Hoyt pointed out that one fell in St. Johns, U.S. Virgin Islands, not too long ago.

Chair Crapo stated that it sounds like between the Town's lease contract and different liabilities, if it falls and damages the land, whether it be State, Town or abutter land, it would need to be addressed at that time.

Attorney Weaver agreed.

Chair Crapo noted there have been several letters that have been submitted to the Board. Those letters have been read and will become part of the minutes for this meeting. Speaking to Attorney Weaver, Chair Crapo asked if there is anything further from the applicant.

Attorney Weaver replied not at this time.

Chair Crapo opened to the public for comments.

Hugh Lee, Pioneer Road, stated he has been supportive of the application by Verizon for the town owned parcel for more than a year. It is a good location and is on town owned property. The Town will receive revenue for it. He thinks the Board needs to move forward and vote in favor of any required variances or special exceptions needed to achieve the cell tower on Port Way. He pointed out that he would have preferred to have the tower located at the high point of the property; however, this is the second best available option on that parcel. He urges the Board to move forward and support the variances and special exceptions that may be required for Verizon to achieve the cell tower.

Michelle Tyminski, 121 Parsons Road, commented that she has submitted a few things for the Board to review for this meeting. The driveway and the cell tower are under consideration. As far as the driveway goes, she does not think denial would result in unnecessary hardship because there is a viable alternative available. Verizon can go to the State and request use of the road adjacent to the area where they are trying to cut trees down. In looking at DES's website, they consider this a tidal wetland area. She believes Verizon will have to go to DES for a permit in order to cut those trees down to construct the driveway.

Attorney Weaver stated that he has submitted into the record a letter from DES confirming this property is not under its jurisdiction. No permits are necessary, as this is not considered tidal wetlands per DES. Additionally, the State property was purchased with federal funds with so many restrictions that Verizon is effectively blocked from using that particular path. He commented that they would rather use that because it already exists, but they simply can't.

Chair Crapo confirmed that the Board has a copy of the NH DES letter. Hearing no further comments, Chair Crapo closed the public session at 7:51 p.m. and opened to the Board for deliberation.

Member Dibble stated that he thinks the points have been well explained. He often times likes to address the concerns of the people who are opposed. One of the early oppositions was the visibility of the tower. There are one or two spots where the tower is going to be very visible. He is very impressed with the fact that other than one letter, there has not been people saying there is an eyesore problem here. It feels to him like the issues relative to the benefit of the public interest ruled that question. The other question was visibility to any particular residences. He thinks there was only one person that offered testimony in that regard. While he is sympathetic to that person's issues, the general welfare of the community unbalances this and settles that issue. Member Dibble continued there are many people who have probably not seen the letter from DES. To make it clear for everyone, DES has ruled this a freshwater wetland, not a tidal wetland. So, it is not subject to those regulations.

Member Hoyt stated this applicant has discussed the cell tower usage and its locations; first with the 120 Brackett Road. He feels this site is so much better than the first location, which he had major problems with. He does not have as many concerns with this site. In fact, it is good to know the warrant articles were accepted by the Town for this site to be the cell tower location.

Member Mikolaities concurred with Member Hoyt. The Board has heard enough testimony in regards to the coverage needed. Even without the expert testimony, everyone knows there is a big gap in coverage

driving down those roads. From a safety issue it is important. He echoes Member Hoyt's comments about town support for this site.

Member Driscoll commented that what Member Mikolaities said in public session was very well said. He continued that he was a little disappointed with the balloon test coordination, but it did give a pretty good indication. He thinks what Verizon asked for was the right height. There was some discussion about going higher but that seemed to go against the public interest portion of the requirements. However, in looking at this for a variance and special exception, it seems very reasonable.

Chair Crapo stated it is well known that there is a gap in coverage and federal law requires certain criteria. This proposal is much farther from residences than the previous proposed location. It is about 700ft from the nearest residence and the views are even further away. There is no structure, other than compound hardware, to impact if the tower fell over. As far as structures, he thinks it is pretty safe. In balancing the need for the cell tower and that, the overall public interest is protected. He does not see how denial of these variances is going to greatly benefit the public enough to outweigh the benefit of the tower being there would give. He knows people are not crazy about the driveway taking the corner around the State land. He does not think it would be feasible to get a corner from the State land just because of the bureaucracy and red tape involved. It is a "crying shame" that is not an easier process because it makes more sense to just round that corner on the existing road. Chair Crapo stated he is in favor of the variance criteria. He asked the Board if they have any thoughts on the special exception.

No comments were heard.

Chair Crapo called for a vote on variances from Section 505.6 A(4) for construction of a wireless telecommunications facility within 100' wetlands buffer:

1) Granting the variance is not contrary to the public interest?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

5) There are special conditions of the property that distinguish it from other properties in the area?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

6) There is no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of that provision to the property?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

7) The purposed use is a reasonable one?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

Motion by Patrick Driscoll to grant the variance requested by Cellco Partnership d/b/a Verizon Wireless to Section 505.6 A(4). Seconded by Charles Hoyt.

Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes

Vote: 5-0

Motion passed.

Chair Crapo called for a vote on variances from Sections 301.8 B(1) and 301.8 B(7) to construct a cell tower and compound within the wetlands buffer:

1) Granting the variance is not contrary to the public interest?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

5) There are special conditions of the property that distinguish it from other properties in the area?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

6) There is no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of that provision to the property?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

7) The purposed use is a reasonable one?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

Motion by Patrick Driscoll to grant the variances requested by Cellco Partnership d/b/a Verizon Wireless to Sections 301.8 B(1) and 301.8 B(7). Seconded by Gregg Mikolaities.

Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes

Vote: 5-0

Motion passed.

Chair Crapo called for a vote on the variance from Section 301.8 B(5)b(2) for cutting trees greater than 4.5” in diameter, measured at a height of 4.5” above ground level, within the wetlands buffer:

1) Granting the variance is not contrary to the public interest?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

5) There are special conditions of the property that distinguish it from other properties in the area?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

6) There is no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of that provision to the property?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

7) The purposed use is a reasonable one?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes

Motion by Burt Dibble to grant the variance requested by Cellco Partnership d/b/a Verizon Wireless for Section 301.8 B(5)b(2). Seconded by Charles Hoyt.

Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes

Vote: 5-0

Motion passed.

Chair Crapo called for a vote on the Special Exception requested from Section 301.8 B(1) and 301.8 B(7) to construct a driveway within the 75' buffer to access wireless telecommunications facility:

1) Is it injurious or determinantal to the neighborhood?

Shawn Crapo – No
Charles Hoyt – No
Gregg Mikolaities – No
Burt Dibble – No
Patrick Driscoll – No

2) Is it in harmony with the general purpose and intent of the ordinance?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes

3) Is the Special Exception essential to the productive use not so zoned?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes

4) Has a N.H. Certified Wetland Scientist shown that to the maximum extent practical the construction shall have the least possible impact on the wetlands?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes

5) Has a N.H. Certified Wetland Scientist shown there is no alternate feasible route which does not cross or alter the wetlands buffer?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes

6) Is economic advantage alone the reason for the Special Exception?

Shawn Crapo – No
Charles Hoyt – No
Gregg Mikolaities – No
Burt Dibble – No
Patrick Driscoll - No

7) Is it in accordance with the specific rules contained in the ordinance?

Shawn Crapo – Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes

Motion by Burt Dibble to approve the application for a Special Exception by Cellco Partnership d/b/a Verizon Wireless to Section 301.8 B(1) and 301.8 B(7). Seconded by Gregg Mikolaities.

Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes

Vote: 5-0

Motion passed.

No other business before the Board.

Adjournment

Motion by Burt Dibble to adjourn at 8:18 p.m. Seconded by Charles Hoyt.

Roll Call: Shawn Crapo – Yes; Charles Hoyt – Yes; Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes

Motion passed.

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT
-Rye, New Hampshire-

NOTICE OF DECISION

Applicant:

Request by Christopher P. Mulligan, Esq from Rosen & Associates,
P.L.L.C. Attorneys at Law on behalf of Jonathan and Jean Murphy owners
of 28 Gray Court

Property:

32 Gray Court, Tax Map 5.2, Lot 89

Application case:

Case # 01-2020


Date of decision:

April 1, 2020

Decision:

The Board voted 4-0-1 to deny the request for rehearing and to uphold the Board of Adjustment's Decision of March 4, 2020 granting variances to the Patricia and Daniel Sullivan of 32 Gray Court. The Board found that the application for rehearing did not successfully raise any point of legal error that had been made or lack of information existed that caused any issues with the previous decision to grant the variances.


Shawn Crapo,
Acting Chairman

BOARD OF ADJUSTMENT	
-Rye, New Hampshire-	
<u>Applicant/Owner:</u>	<u>NOTICE OF DECISION</u>
<u>Property:</u>	Cellco Partnership d/b/a Verizon
<u>Application case:</u>	68 Port Way, Tax Map 23, Lot 1
<u>Date of decision:</u>	Property is in the Single Residence District
<u>Decision:</u>	Case #47-2019
	April 15, 2020
	The Board voted 5-0 to grant variances to the following sections of the Rye Zoning Ordinance:
	<ul style="list-style-type: none">• § 505.6 A(4) for construction of a cell tower within 100 ft. of wetlands.• § 301.8 B(1) and § 301.8 B(7) for construction of a cell tower and compound within the wetlands buffer.• § 301.8 B(5) b(2) for cutting trees greater than 4.5 inches in diameter measured at a height of 4.5 ft. above ground level within the wetlands buffer.
	The Board voted 5-0 pursuant to § 301.8 B(6) to grant a special exception for construction of a driveway within the wetlands buffer to access a wireless telecommunications facility.
	 Shawn Crapo, Acting Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person aggrieved by this action. Motions and the Rye Board of Selectmen, see Article VII, Section 203 of the Rye Charter, for more information.